EMERGENCE OF USULUL FIQH UNDER SHARI'AH: FROM DEVELOPMENTAL TO STANDARDIZATION STAGE

by

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ABSTRACT

Shari'ah is a Divine Law of Allah (SWT) with universal application across the globe. It is established to shape the lives of all Muslims. Its primary sources, which are Qur'an and Sunnah, are unchangeable. Nevertheless, the rules of Shari'ah are dynamic to emerging issues in the Islamic world. This is evident in the introduction of contemporary Islamic financial practices such as Islamic Banking, Islamic Capital Market and Takaful (Islamic Insurance), amongst others. Rules of Shari'ah are made dynamic to emerging contemporary issues through the instrumentality of Usulul Fiqh. To this end, this article, relying on doctrinal method of research, examines the emergence of Usulul Fiqh from developmental to the standardization stage. Thus, the article examines the Development, Systematization, Documentation and Standardization of Usulul Fiqh. The article reveals that the foundation of Usulul Fiqh was laid at the periods of Prophet Muhammad (PBUH) and the Rightly Guided Caliphs. The article contends that the systematization of Usulul Fiqh was achieved during the period of Tabi'uun. The article contends further that the documentation of Usulul Fuqh came to fore at post Tabi'uun's Era when Imam Shafi'i made a breakthrough of documentation of Usulul Fiqh through his book, Ar-Risalah (the Message). The article finally contends that the ultimate emergence of the two major approaches to Usulul Fiqh, viz: Theologians and Jurists methods, brought the standardization of Usulul Fiqh to the lime light. The paper recommends that intending scholars of Shari'ah should acquaint themselves with the history of Usulul Fiqh for better understanding.

Keywords: *Usulul Fiqh*, *Madhhab*, Emergence, Standardization, Stage.

INTRODUCTION

Usulul Fiqh is a core *Shari'ah* course taught across the globe. Its continued relevance in the realm of Islamic law and practice cannot be over-emphasized. This is owing to the nature of *Shari'ah* as a divine law that is not susceptible to amendment but dynamic in its application to the emerging issues in the Islamic world over. *Usulul Fiqh,* like other Islamic concepts, has its own origin deeply rooted in *Shari'ah*. It is used as techniques to solving emerging problems that are not directly

captured by the primary sources of Shari'ah.[1] It is therefore easy for *Usulists* (Islamic Jurists) these days to proffer solutions to emerging problems as a result of standardization of *Usulul Fiqh*. It must be borne in mind that before its standardization, *Usulul Fiqh* has undergone several historic stages. It is not gain-said that not all *Muslim Ummah* (Muslim Community) are aware of the history surrounding the emergence of *Usulul Fiqh*.[2] Thus, understanding of the origin *Usulul Fiqh* goes a long way to appreciate the applicability of branch of knowledge.

Against the foregoing backdrop, this article shall examine the emergence of *Usulul Fiqh* by tracing it from its developmental stage to the standardization stage.

CONCEPTUAL ANALYSIS OF USULUL FIQH

Usulul Fiqh is a combination of two (2) Arabic words '*Usul'* and '*al-Fiqh*.' *Usul* is the plural form of '*Asl'* which means the foundation, the origin, the source.[3] It is also used to mean pillars or principle.[4] *Usul* is mainly employed to mean *Ad-Daleel* and *Al-Qa'idah* i.e. evidence and principle respectively.[5]

Al-Fiqh, literally means the understanding of what is intended.[6] Juristically, *Al-Fiqh* is defined as a science of the practical legal rules as obtained from their peculiar sources.[7] *Al-Fiqh* is also technically explained to mean the knowledge of practical rules of *Shari'ah* acquired from the detailed evidences in the sources of *Shari'ah*.[8] Thus, jurists are of the view that *Al-Fiqh* enables scholars to have adequate understanding of questions of law such as *Salah* (Prayer), *Sawm* (Fasting), *Zakat* (Compulsory Charity), *Hajj* (Pilgrimage), *Mu'amalat* (Contractual Transaction),

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[1] The *Qur'an* and *Sunnah*.

[2] E.M. Abdelwahab, et al, 'The Algorithm of Islamic Jurisprudence (Fiqh) with Validation of an Entscheidungsproblem', *Journal Academica,* 4(2):52-87, 2014, pp. 1-29

[3] B. Yasir, 'Understanding Usool Al-Fiqh', *The Codes of Scholars: Usool Al-Fiqh,* (Al-Maghrib Institute (undated)) p. 5

[4] A. Zubair, *The Major Sources of Islamic Law,* (Al-Madinah Heritage Publications, Lagos, 2005), p.12

[5] *Ibid*, pp.12-14

[6] B. Yasir, 'Understanding Usool Al-Fiqh', p. 5

[7] A. Zubair, *The Major Sources of Islamic Law,* p.11

[8] B. Yasir, 'Understanding Usool Al-Fiqh', p. 5

Wasiya (Will), *Nikah* (Marriage), *Talaq* (Divorce) etc.[9] The peculiar sources[10] referred to in the definition relate to major sources of *Shari'ah* such as *Qur'an*, *Sunnah* (prophetic Traditions) and *Ijtihad* (Independent Research).[11]

Therefore, *Usulul Fiqh t*echnically means the principles, methods, or science of the process of deduction of legal ruling from the established legal sources.[12] In another vein, *Usulul Fiqh* is technically defined as a science dealing with principles and provisions which lead to the art of derivation of the practical legal rules of law from their various sources.[13] Thus, *Usulul Fiqh* is an important techniques used to espouse *Shari'ah* to emerging situations within the *Maqsidu Shari'ah* (Objective of *Shari'ah*)[14] with a view to ensuring *Malsaha Al-Ummah* (Public Interest).

The territory of *Usulul Fiqh* does not go beyond four (4) major areas[15] which are *Ad-Daleel (*evidence), *Al-Hukm* (Legal Ruling), Methodology and *Al-Mujtahid* (The Islamic Jurist). With respect to the first area of focus of *Usulul Fiqh* which is *Ad-Daleel* (Textual Authorities), *Usulul Fiqh* plays pivotal role in identifying and separating the category of acceptable authorities[16] from those ones which scholars have divergent opinions over.[17] Also, it deals with the identification and separation of textual authorities that are *Qata'i*[18] from *Dhanni*.[19]

[9] A. Zubair, *The Major Sources of Islamic Law,* p. 5. See also, M. S. Abdullah al-Ashqar, *al-Wadih Fii Usulul Fiqh,* (Daru as-Salaam/Daru An-Nafais: 2001/1422 H), pp. 8-9
[10] *Ibid*
[11] *Ijtihad* is an elastic concept and it includes *Ijma'* (consensus), *Qiyas* (analogical deduction), *Istihsan* (legal preference), and *Maslahah* (public interest).
[12] M. S. Abdullah al-Ashqar, *al-Wadih Fii Usulul Fiqh,* p. 7. See also B. Yasir, 'Understanding Usool Al-Fiqh', p. 5.
[13] A. Zubair, *The Major Sources of Islamic Law,* p. 14
[14] This is typically divided into five viz: *Hifz Nafs* (protection of life), *Hifz Maal*, (protection of property), *Hifz* '*Aql* (protection of intellect), *Hifz Deen* (protection of religion), and *Hifz Nasb* (protection of lineage).
[15] A. Wahab, *et al*, 'The Algorithm of Islamic Jurisprudence (Fiqh) with Validation of an Entscheidungsproblem', *Journal Academica* 4(2):52-7, 2014, pp. 1-40, see also, A. Zubair, *The Major Sources of Islamic Law,* pp. 10-21
[16] These are *Muttafakun 'alayhi* (the authorities which scholars all agreed upon)
[17] M. S. Abdullah al-Ashqar, *al-Wadih Fii Usulul Fiqh,* pp. 7-10
[18] These are the textual evidence or textual authorities that are conclusive in nature
[19] These are inconclusive textual evidence or textual authorities suggesting more than one connotation.

Hukm is the second area of focus of *Usulul Fiqh*. It is the legal value derived from *Daleel*. To this end, *Usulul Fiqh* enables the *Usulists* (Islamic Jurists)[20] to identify *Ibahah*[21] (Permissibility)[22] that are emphatic from those ones that are not emphatic with a view to determining their actual legal values.

The third area of focus of *Usulul Fiqh* is methodology.[23] Methodology, under *Usulul Fiqh*, has to do with the preference of the *Usulists'* approaches/techniques in formulating jurisprudential principles. For methodology, there are two (2) popular approaches of Theologians and Jurists Approaches. The Theologians approach is a method of formulating Islamic jurisprudential principle in a theoretical manner.[24] The Jurists approach is another method of formulating Islamic jurisprudential principles in a pragmatic manner.[25] Apart from these popular two approaches, there is also a third approach but it is not popular. The third approach is a method of formulating Islamic jurisprudential principle using the combination of the two approaches; Theologians and Jurists.[26]

Mujtahid (Islamic Jurist) is the last area of focus of *Usulul Fiqh*. Through the study of who a *Mujtahid* is, *Usulul Fiqh* determines the category of scholars who are qualified and competent to formulate Islamic jurisprudential principles or legal rulings.[27] To this end, there is *Mujtahid Mutlaq* (Full-fledge/Independent Jurist). The category of this *Mujtahid* are capable of making independent legal ruling without any affiliation to a particular Imam or *Madhhab*.[28] There is also *Mujtahid Madhhabi* (otherwise known as Dependent Jurist).[29] The scholars in the category of this *Mujtahid* can also make valid legal ruling but by affiliating with an *Imam* or *Madhhab*. There is also what

[20] The competent researchers that can make valid Islamic jurisprudential principles or legal rulings on certain subject matter of law.
[21] This may come in form of *Halal* (permissible), *Haram* (forbidden), *Makruh* (Dislike), *Mandub* (recommended) etc.
[22] In *Fiqh al- Islam,* the concept of *Ibahah* is technically used to connote the principle that anything which is not expressly prohibited in permissible.
[23] A. Zubair, *The Major Sources of Islamic Law*, pp. 32-35
[24] *Ibid*
[25] *Ibid*
[26] This approach came to fore as a result of the shortcoming embedded in separately using either Theologian or Jurists methods to formulate jurisprudential principle.
[27] A. Abdulazeem, 'Critical Review of the Tools of Ijtihad used in Islamic Finance', *Munich Personal RePEc Archive (MPRA),* June, 2016, pp. 1-19
[28] School of law under Shari'ah.
[29] Culled from Prof. Abdulrazaaq Abdulmajeed Alaro's Lecture, delivered at MPhil Class of Islamic Law Postgraduate Students, Harmattan Semester, 2019/2020, Islamic Law Department, University of Ilorin.

is called Mijtahid Jam'u i.e. the combination of *Mujtahid Mutlaq* and *Mujtahid Madhhabi*.[30] This simply means that scholars in this category possess and showcase the qualities of *Mujtahid Mutlaq* and *Mujtahid Madhhabi* in the way and manner they formulate legal ruling or jurisprudential principles. Still under *Mujtahid*, *Usulul Fiqh* also reveals *Mujtahid Mutakhassis* (Specialized Jurist).[31] The category of this *Mujtahid* (Islamic Jurist) have a specialized subject area(s)[32] of law where they can only formulate Islamic jurisprudential principles.

DEVELOPMENT OF USULUL FIQH

The evolution of *Usulul Fiqh*, according to an Islamic Scholar,[33] is said to have undergone six major stages viz: the foundation, establishment, building, flowing, consolidation and stagnation and decline. By the contribution of another Scholar,[34] the origin of *Usulul Fiqh* was contended to have undergone five stages thus: (i.) the Time of the Prophet SAW, (ii.) the Time of *Khulafahu Rahidun* (Rightly Guided Caliphs), (iii.) the Time of *Sahabah* (Companions)[35], (iv.) the Time of *Tabi'uun* (The pious Muslims who came after the Era of the Rightly Guided Caliphs), and (v.) Post *Tabi'uun* Era. However, in this article, the emergence of *Usulul Fiqh* is examined from the following stages, viz: (1) Development Stage, (2) Systematization Stage, (3) Documentation Stage, and (4) Standardization Stage. Starting with Development Stage, the historical background to development of *Usulul Fiqh* in this article focuses on the time of the Prophet (SAW) and his Rightly Guided Caliphs (*Khulafahu Rashidun*).

[30] *Ibid*
[31] *Ibid*
[32] Such as banking and finance, inheritance, marriage, worship, medical law, governance etc.
[33] Philips, B., *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, International Islamic Publishing House, pp. 1-148, available at https://en.islamway.net/book/1275/-the-evolution-of-fiqh-islamic-law-and-the-madh-habs accessed on 30th September, 2020.
[34] I.N. Tahir, and N.A.B. Abd Rahman, 'Origin of Usul Fiqh from Birth to Competition', *International Malaysia University Publication* pp. 1-8, available at https://www.academia.edu/32938145/_Origin_of_Usul_Fiqh_from_Birth_to_Competition accessed on 30 September, 2020.
[35] Companions, in this article, refers to the Companions of Prophet Muhammad (PBUH) who accepted Islam, lived and related with him in *Deen* (Religion) during his Prophethood till his death. These Companions saw Prophet Muhammad and learnt the *Deen* (Religion) from him and also practised it during his life time to the satisfaction of the Prophet. They were the people of the Prophet's generation who were the best amongst the generation of the Prophet's *Ummah* (Nation).

It is to be noted first and foremost, that the foundation of *Usulul Fiqh* was laid down in the time of Prophet Muhammad (SAW).[36] The reason being that most of the verses of the Holy Qur'an revealed at this time were geared towards solving the problems confronting the Prophet and his *Ummah* (Community)[37] in *Makkah* and *Medeenah*. Thus, the *Qur'an* served as the direct solution to the emerging problems confronting Muslims and even non-Muslims during the life time of the Prophet. In most cases, the verses of the Holy *Qur'an* are proactive in nature,[38] while in other cases, the problems that confronted the Prophet or his *Ummah* (Community) preceded the revelation of the verse to solve it.[39]

The Prophet established some principle of *Usulul Fiqh* and practicalized them to solve problems for his *Ummah* (Community). Thus, anytime some verses are revealed which created confusion in the minds of the *Sahabah* (Companions), the *Sahabah* usually approached the Prophet for correct interpretation and the application of the verse in question. At this period, all the legal rulings with respect to the fundamental of faith, religion, peaceful co-existence, mutual and contractual transactions as well as private lives of Muslims were defined from the *Qur'an* and *Sunnah* of the Prophet. The *Muslim Ummah* were unanimous that the primary sources of *Shari'ah* were *Qur'an* and *Sunnah* (Prophetic Traditions).

Apart from the *Qur'an* and *Sunnah* (Prophetic Traditions), the Prophet also gave approval for *Ijtihad* (Independent Research/Reasoning)[40] as a valid means of deriving legal rulings. A case in point was when *Rasulallah* (Prophet Muhammad) sent Mu'adh Ibn Jabal to Yemen to oversee the affairs of the Muslims in the area. The *Rasulullah* (Prophet Muhammad) asked him? What will you do if a matter is referred to you for judgment? Mu'adh replied: "I will judge according to the Book of *Allah*." The Prophet again asked him, "What if you find no solution in the Book of *Allah*?" Mu'adh again replied: "Then I will judge by the *Sunnah* (Traditions) of the Prophet." The Prophet asked him for the last time? And if you do not find it in the *Sunnah* of the Prophet?" Mu'adh then

[36] A. Wahab, *et al*, 'The Algorithm of Islamic Jurisprudence (Fiqh) with Validation of an Entscheidungsproblem', p. 3
[37] That is, the followers of Prophet Muhammad (SAW)
[38] The example of these verses is Qur'an79:42
[39] The example of these verses is *Qur'an* 18: 23-24
[40] S. Pakeeza, and F. Fariha, 'Ijtihad as a Legislative Function: Role of Ijtihad, Ifta and Taqleed in Legislative Process', *Journal of Islamic and Religious Studies,* 1:1, Jan-Jun, 2016, p. 33

replied: "Then, I will make Ijtihad to formulate my own judgment." The Prophet patted Mu'adh's chest and said: "Praise be to *Allah* who has guided the messenger of His Prophet to that which pleases Him and His Messenger."[41]

To this end, the companions of the Prophet were in the habit of exercising *Ijtihad* (independent research/reasoning) where they were faced with situations requiring urgent solution before they could contact the Prophet.[42] These forms of *Ijtihad* (independent research/reasoning) were later made known to the Prophet for his approval or rejection.

After the demise of RasuIlullah (Prophet Muhammad), the era of *Khulafahu Rashidun* (Rightly Guided Caliphs) was ushered in.[43] The method adopted by Caliphs at this period was problem solving. That is, the Caliphs deduced legal ruling whenever any problem arose with a view to solving it.[44] The problem solving procedures of the *Khulafalu Rashidun* (Rightly Guided Caliphs) can be summarized thus:[45]

1. Searching for a specific ruling on the problem in the *Qur'an*.
2. If not found, resort is made to the *Sunnah* (Tradition) of the Prophet with a view to searching for a specific ruling on the problem.
3. If not found yet, then resort is made to calling for a meeting of the notable *Sahabah* (Companions) with a view to get their unanimous position as solution to solving the problem.[46]

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[41] I.N. Tahir, and N.A.B. Abd Rahman, 'Origin of Usul Fiqh from Birth to Competition', pp. 2-3; see also, A. Zubair, *The Major Sources of Islamic Law*, pp. 25-26

[42] K. Sajila, 'Collective Ijtihad: History and Current Perspective', *Journal of Humanities and Social Sciences Studies (JHSSS)'* Vol. III, Issue V, March 2017, pp. 153-155

[43] Y.T. Delorenzo and A.S. Al Shaikh-Ali, (eds) *Usul Al Fiqh Al Islami: Source Methodology In Islamic Jurisprudence* (The International Institute of Islamic Thought, Herndon, Virgina, USA, 1411 AH/1990 AC), pp. 7-16

[44] M.Y. Faruqi, 'Modes of Ijtihad in the Judgments of the Khulafa al-Rashidun', *Intellectual Discourse,* Vol. 1, No. 1, October, 1993, pp.9-19

[45] B. Philips, *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, pp. 46-47. It must be noted that in the recent time, *Usulul Fiqh* has developed to the extent that whenever *Usulist* intends to make legal ruling with a view to solving a particular problem, he needs not follow the Hierarchy of the sources of *Fiqh* before he could make a valid legal ruling. That is, he can validly for instance consult *Ijma' (Consensus of Opinions)* without having to go through the rigour of searching first and foremost from *Qur'an* and *Sunnah* (Traditions). In other words, it is the nature of the problem to be solved that determines the particular source of *Shari'ah* to consult. Culled from Prof. Abdulrazaaq Abdulmajeed Alaro's Lecture, delivered at MPhil Class of Islamic Law Postgraduate Students, Harmattan Semester, 2019/2020, Islamic Law Department, University of Ilorin.

[46] This is technically referred to as *Ijma'*.

4. If there was no unanimous position of the *Sahabah* (Companions), then resort is made to the position of the majority.
5. If however, there was no clear-cut majority view, then the Caliphs would make his own *Ijtihad* with a view to solving the problem.

Apart from the formal meeting of the *Sahabah* (Companions) called by the Caliphs to obtain their *Ijma'* (Consensus of Opinions), there were many occasions where individual *Sahabah* (Companions) were needed to make legal rulings.[47] The features of the rulings made by the individual *Sahabah* (Companions) at this period were:[48]

1. That much importance or sanctity was not attached to such individual rulings because, if their ruling was correct, it was attached to Allah (SWT) and where they erred in their ruling, it was said to have come from themselves and *Shaytan* (Satan).
2. That much importance or sanctity was attached to the Sunnah of the Prophet over and above the individual ruling of the *Sahabah* (Companions).
3. That mutual respect was accorded to the *Sahabah's* individuals rulings especially in the absence of authentic proof and *Ijma'* (Consensus of Opinions) from the generality of the *Sahabah* (Companions). Thus, no *Sahabah* (Companions) would force his opinion on another.

It must be borne in mind that each of the *Khulafahu Rashidun* (Rightly Guided Caliphs) usually adopted certain procedure/pattern[49] to solving problems they were confronted with. While Abubakar As-Siddiq, during his time, usually relied on the *Qur'an*, *Sunnah* (Prophetic Tradition), *Ijma'* (Consensus of Opinions) and his own Ijtihad to deduce legal ruling depending on the circumstance, Umar bn Al-Khattab followed the style of Abubakar, likewise Uthman bn. Affan. However, during his tenure, Ali bn. Abi Talib, in addition to the procedure laid down by the previous Caliphs, used a variety of techniques in making decisions or legal rulings.[50] Thus, he added *Qiyas* (Analogical Deduction), *Istishab* (Presumption of Continuity), *Istihsan* (Juristic

[47] M.Y. Faruqi, 'Modes of Ijtihad in the Judgments of the Khulafa al-Rashidun', pp.9-19
[48] *Ibid*
[49] Though not formally laid down as precedent to be followed by all Scholars in the Islamic State then.
[50] B. Philips, *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, pp. 47-53

Preference) and *Istislah* (Welfare).[51] It is important to note that the aforementioned terms were not being popularity referred to as such unlike the recent time.[52]

The summary of the characteristics of *Fiqh* of this period[53] was as follows:

1. Realism: That is, *Fiqh* was based on actual problem solving or real life situation as against the hypothetically imaginary situations.
2. Non-Prescription of a particular procedure for deduction of legal rulings throughout the Islamic nation.
3. Avoidance of personal interpretation in favour of literal meaning of the texts of the *Qur'an* and *Sunnah*.
4. Unification of *Madhhab* (schools of law) under the direction of the Righteous Caliphs.

SYSTEMIZATION OF USULUL FIQH

The systematization of *Usulul Fiqh* came to fore in the Era of *Tabi'uun*. The post *Khulafahu Rashidun* Era ushered in the Era of *Taabi'uun*. In this Era, many people of different nations accepted Islam thereby adding to the existing Islamic empire.[54] The Islamic empire thus became more heterogeneous. This period featured people reverting back to set of particular principle to derive Islamic legal ruling. There were also numerous diversity in juristic opinions which later called for the need to have clear guidance for the process of deduction of legal ruling. The foregoing therefore led to the development of new sources in addition to the existing ones.[55] This period featured the establishment of many *Madhhabs* (schools of law) which shaped *Fiqh* as an independent branch of Shari'ah. The trends relating to the introduction of *Madhhab*[56] at this period include the period of the existence of great Imams and their major students as well as the period of deaths of major scholars of the schools of thought.

[51] *Ibid*
[52] *Ibid*
[53] The period of *Khulafahu Rashidun*
[54] B. Yasir, 'Understanding Usool Al-Fiqh', p. 9
[55] That is, the *Qur'an*, *Sunnah*, *Ijma'* and *Qiyas*.
[56] *Madhhabs* at this period included the Hanafi, Awzaa'i, Maliki, Zaydi, Laythi, Thawri, Shafi'i, Hambali, Dhaahiri and Jaareeri.

The period of the Great Imams was influenced by a number of factors, one of which was the States' constant patronage of Islamic scholars. This is evident, for instance, in the exhibition of respect shown by the 'Abassid Caliphs for *Fiqh* and its scholars.[57] The Caliphs were in constant consultation with Islamic Scholars for their positions on any matter arising.[58] In one of such occasions, Caliph Al-Mansur commissioned Imam Malik to compile an authoritative Sunnah of the Prophet Muhammad for the purpose of making it binding on all *Muslim Ummah* (Muslim Community) across the Islamic empire.[59] Imam Malik however rejected the idea to make the book binding since this period was characterized with flexibility. This is because both Imam and their students used to engage in debates where opinion of one another is respected.

Increase in centers of learning and the zeal to acquire knowledge was also one of the factors that characterized this period.[60] Scholars of this period travelled back and forth with a view to acquiring and updating their knowledge especially in the area of current position of other contemporaries on burning issues requiring legal resolution.[61] To this end, a notable student of Imam Abu Haneefah,[62] Muhammad Ibn. Al-Hassan travelled from Iraq to *Madeenah* with a view to study under Imam Malik and to memorize his book of *Ahadith*, *Al-Muwatta*. In the same vein, Imam, Ash-Shafi'i[63] travelled to *Madeenah* to study under Imam Malik and then to Iraq to study under Muhammad Ibn Al-Hassan and thereafter to Egypt to study under Imam Al-Layth Ibn Sa'ad.[64] These numerous travels by the scholars in search of knowledge gave room for cross fertilization of ideas, thoughts, understandings and opinions.[65]

More so, the spread of objective debates and discussions of new evolving issues with a view to proffering legal ruling characterized this period.[66] Dogmatism and rigidity were eschewed in

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[57] "The Abbasid Dynasty: The Golden Age of Islamic Civilization" available at https://www.saylor.org/courses/hist101/#9.3.1 accessed on 11 February, 2020, pp. 1-6
[58] *Ibid*
[59] B. Philips, *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, p. 61
[60] *Ibid*
[61] *Ibid*
[62] The founder of Hanafi School of Law
[63] The founder of Shafi'i School of Law. See D.I. Abdur Rahman, , *Shariah: The Islamic Law* (Al-Yassar Publishers, Kano, 2007) pp. 103-106
[64] The founder of Laythi School of Law. However, this School later disappeared because it could not stand the test of time.
[65] B. Philips, *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, p. 62-63
[66] *Ibid*, pp. 63-64

favour of flexibility. Scholars accepted and objected to each other's opinion objectively. Even, some students thought it fit to reject the earlier position of their teachers on discovery of authentic Hadiths of the Prophets.[67]

The death of major scholars of the *Madhhabs* gave a new dimension. It was a situation of blessing in disguise. This is because, the people feared that the death of these scholars might lead to the death of *Fiqh* if care was not taken. Thus, period which was between 235 and 335 A.H witnessed lots of interesting developments.[68] One of the major occurrences in this period is the compilation of *Fiqh*.[69] This was made possible by the efforts of the second generation of the students who travelled to the various parts of Islamic state to compile different *Ahadith*[70] of the Prophet and publish them in different books.[71] This was to enhance the process of making legal rulings and principles. This therefore gave the scholars easy access to the *Ahadith* with a view to aiding in their application to the emerging issues. The features of the compilation of Hadiths at this period were summarized thus:[72]

1. Mixture of legal rulings, *Hadiths*, opinions of *Sahabah* (Companions of the Prophet) and their students. Example of this is *Al-Muwatta* of Imam Malik.
2. Mixture of the basic principles of *Fiqh* and only the *Hadiths* cited basically to support the position of their authors. Examples of these types of collections include *Al-Umm* and *Kitab al-Kharaj* by Imam Ash-Shafi'i and Imam Abu Yusuf respectively.
3. Absolute concentration on the application of *Fiqh* with little reference to supporting *Hadiths*. Example of this compilation includes *Al-Mudawwanah* of Imam Ibn Al-Qasim and the six books by Imam Muhammad Ibn al-Hassan.

With the above efforts, people tended to concentrate on the available legal rulings earlier made by prominent scholars at the expense of basing their ruling on the authentic Hadiths as was

[67] *Ibid*
[68] *Ibid*
[69] A. Muhammad, and R. Habibur, 'The Origin and Evolution of Fiqh Codification: A Preliminary Analysis', *Journal of Islam in Asia,* Vol. 13, No. 1, June, 2016, pp. 194-219
[70] This is the plural form of *Hadith* which therefore connotes many sayings of the Prophet.
[71] *Ibid*
[72] B. Philips, *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, p. 65

traditionally practised in the past.[73] Thus two (2) *Madhhab Ahlul Hadith* and *Madhhab Ahlur*-Ray' became apparent.[74]

Madhhab Ahlul Hadith

Madhhab Ahlul Hadith literally means the School of the followers of the authentic Hadith of Prophet Muhammad (PBUH).[75] The *Madhhab* pragmatically solve lives problems by relying on the relevant provisions of the Holy Quran and authentic Hadith of Prophet Muhammad. In every given circumstances, this *Madhhab* gives primacy and priority to the provisions of the Holy *Qur'an* and authentic *Hadith* and despises any *Rai'* (human wisdom) that tends to contradict them.[76] According to them, *Wahi* (revelation) is far more important than *Rai'* because *Rai'* only explains *Wahi* which explanation may be subjective depending on the conviction and background of the *Mujtahid* (Islamic Jurist) in question. The *Tareeqah Ahlul Hadith*[77] was popular amongst the inhabitants of *Hijaz* (*Makah* and *Madeenah*) [78]To this end, Imam Malik, Imam Shafi'i, Imam Ahmad, Imam Bukhari were some of the prominent *Mujtahids* (Islamic Jurists) that were well known with deduction of legal rulings by way of giving primacy to *Qur'an* and *Hadith*.[79]

Madhhab Ahlur-Rai'

Madhhab Ahlur-Rai' connotes the School of the followers of human wisdom. This *Madhhab* finds solutions to live problems by deduction of legal ruling from *Fiqhi Usul* i.e. the rulings made by earlier scholars.[80] In the event of solving lives problems, *Madhhab Ahlur-Rai'* do not necessarily consider the *Qur'an*, *Sunnah* and even *Ijma'* of *Sahabah* (Companions)[81] but rather consider the laid down principles contained in the rulings of the earlier scholars by way of *Qiyas* (Analogical Deduction) to deduce various branches and sub-branches from which they finally premise their

[73] *Ibid*
[74] A. Khallaf, '*Ilmu Usulul Fiqh,* (Darul Hadith: 2003/1433 H), pp. 17-18
[75] M. Saba'ii, *As-Sunnah* (Beirut: Al-Maktabul Islami, 4th Edition 1405/1985), p. 70
[76] *Ibid*
[77] This connotes the path of the followers *Hadith.*
[78] Abdur Rahman Ibnu Khaldoon, *Tareekh* (Beirut: Muassasatul A'lami, n.d.) Muqaddamah P. 1/446
[79] M. Saba'ii, *As-Sunnah,* p. 70
[80] S. Waliullah, *Hujjatullahi Baligah* (Cairo: 1322 A.H.) P. 1/129
[81] *Ibid*

solutions.[82] This *Tareeqah Ahlur-Rai'* and *Qiyas*[83] was prominent among the inhabitants of *Iraq*[84] and the front runner of this group is Imam Abu Hanifah amongst other scholars.

When mere opinions and legal ruling of these scholars (from *Tareeqah Ahlur-Rai'* and *Qiyas*) were gaining undeserved prominent, some Imams rose to the occasion to remedy the situation. This led to the painstaking efforts of great Imams to collate all possible sources of authentic Hadiths with a view to resolving the emerging issues in *Fiqh*. The aftermath of the efforts culminated into the compilation of *Saheeh* of Imam Bukhari[85] (194 – 256 A.H), and *Saheeh* of Imam Muslim[86] (206 – 261 A.H), having learnt from the extensive work of their teacher, Imam Ibn Hambali's *al-Musnad*.[87]

With the availability of great books, the system of reasoning, deduction and inference by Islamic scholars was enhanced. This undoubtedly gave them new approach to *Fiqh* thereby leading to systematic organization of the sources of *Fiqh* in order of their importance thus:[88]

1. *Qur'an*
2. *Sunnah* (Prophetic Traditions)
3. *Ijma'* (Consensus of Opinion)
4. *Qiyas* (Analogical Deduction)
5. *Istihsan* (Legal Preference)
6. *Urf* (Custom)

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[82] *Ibid*
[83] This connotes the path of the followers of Human Wisdom and Analogical Deduction.
[84] Abdur Rahman Ibnu Khaldoon, *Tareekh*, P. 1/446
[85] Abu Abdullah Muhammad ibn Ismail ibn Ibrahim ibn Al-Mughirah ibn Bardizyah Al-Jufri Al-Bukhari popularly known as Imam Bukhari was born on 194 A.H. and died on 256 A.H. see generally, https://www.google.com/amp/s/www.islamicfinder.org/knowledge/birography/story-of-imam-buhari/amp/ accessed on 1st October, 2020.
[86] Abu al-Husayn 'Asaakir ad-Din Muslim ibn al-Hujjaj ibn Muslim ibn Ward ibn Kawshaadh al-Qushayri an-Naysaabuuree popularly known as Imam Muslim was born on 206 A.H. and died on 26 A.H. see generally, https://www.google.com/amp/s/www.islamicfinder.org/knowledge/birography/story-of-imam-muslim/amp/ accessed on 1st October, 2020.
[87] M. Saba'ii, *As-Sunnah,* p. 67
[88] *Ibid*, 67-68

Thus, various *Madhhabs* (Schools of law) in existence preferred certain sources of law for deduction of legal rulings to another.[89] For instance, *Madhhab* of Imam Hanafi relied on the *Qur'an, Sunnah* (Prophetic Traditions)*, Ijma* (Consensus of Opinions), Individual opinion of *Sahabah, Qiyas* (Analogical Deduction)*, Istihsan* (Juristic Preference) and *Urf* (Custom). The *Madhhab* of Imam Malik relied also on the *Qur'an, Sunnah* (Prophetic Traditions)*, 'Amal* (Deeds) of the people of *Madeenah, Ijma'* (Consensus of Opinions), individual opinion of *Sahabah* (Companions), *Qiyas* (Analogical Deduction)*, Istislah* (welfare) and *Urf* (Custom). The Imam Shafi'i *Madhhab* relied on the *Qur'an, Sunnah* (Prophetic Traditions)*, Ijma'* (Consensus of Opinions), individual opinion of *Sahabah* (Companions), *Qiyas* (Analogical Deduction)*, Istishab* (Presumption of Continuity). The Imam Hambali *Madhhab* relied on the *Qur'an, Sunnah* (Prophetic Traditions)*, Ijma'* (Consensus of Opinions), individual opinion of *Sahabah, Hadeeth Da'eef* (Weak *Hadeeth*) and *Qiyas* (Analogical Deduction).[90]

From the foregoing, it is clear that all the major four *Madhhabs* were unanimous on the *Qur'an, Sunnah* (Prophetic Traditions)*, Ijma* (Consensus of Opinions) and *Qiyas* (Analogical Deduction) as the sources of law. The other sources of law in which there are divergence of opinion among the *Madhhabs* are the *Istihsan* (Juristic Preference)*, Istislah* (Welfare)*, Istishab* (Presumption of Continuity), Individual opinion of *Sahabah* (Companions), '*Amal* (Deeds) of the people of *Madeenah*, *Urf* (Custom)*, Hadeeth Da'eef* (Weak *Hadeeth*) to mention but a few.[91]

Thus, in view of the above, it is discernible that systematization of *Usulul Fiqh* was occasioned at the period of *Tabi'uun*.

DOCUMENTATION OF USULUL FIQH

The period after the Era of *Tabi'uun* witnessed various changes in terms of societal needs.[92] The Islamic empire at this time expanded. The period witnessed massive migrations of Muslims to new

[89] *Ibid*, 70-98; see also D.I. Abdur Rahman, *Shariah: The Islamic Law,* pp. 8-111
[90] B. Philips, *The Evolution of Fiqh (Islamic Law and The Madh-habs)*, p. 65
[91] *Ibid,* 70-78
[92] Yasir, B., 'Understanding Usool Al-Fiqh', p. 9

places such as Rome[93] in the heart of Italian peninsula, Parsi in India and the host of others.[94] This therefore led to the eventual mixture of Arabs with non-Arabs. With the foregoing development, numerous problems began to emerge with specific or direct solution not contained in the Book of Allah and the traditions of the Prophet.[95] Since situation like this cannot be left in abeyance, thus, there is need for emerging solution.

One of the great Imams, Imam Ash-Shafi'i made a historic documentation of *Usulul Fiqh*[96] in his book, titled: *Ar-Risalah*[97] (The Letter) with a view to serving as important reference material for solving emerging problems requiring urgent solutions. This book, *Ar-Risalah*, contained 'verses from the Holy *Qur'an* and explanation of the *Hukm* (legal rulings)*, Nasikh* (Abrogating verses) and *Mansukh* (abrogated verses), *Sunnah* (Traditions of the Prophet (PBUH)*, Ijtihad* (Research)*, Ijma'* (consensus of opinions) and *Qiyas* (analogical deduction).[98] Undoubtedly, this authorship of *Usulul Fiqh* by Imam Ash-Shafi'i is remarkable in the historical development of *Usulul Fiqh.*

It is important to note that with the advent of the ground breaking documentation of *Usulul Fiqh* by Imam Ash-Shafi'i, others Imams, scholars and students have taken clue and contributed immensely to the documentation of *Usulul Fiqh*.[99]

STANDARDIZATION OF USULUL FIQH

Standardization is the final stage of the development of *Usulul Fiqh*. This flows from the documentation of *Usulul Fiqh.* At this stage, *Usulul Fiqh* becomes ready-made for easy application by competent scholars. After the first documentation of *Usulul Fiqh* by Imam Shafi'i, many scholars followed suit. Thus, there were many compilations of *Usulul Fiqh* by different scholars with different techniques and methods. Over the span of time, two major methods came to fore. These are the Shafi'is and Hanafis' methods.[100] These methods were dominant in terms of usage

[93] B. Enrich, 'Rome, National Capital, Italy' available at https://www.britannica.com/place/Rome accessed on 30th September, 2020.
[94] "The Abbasid Dynasty: The Golden Age of Islamic Civilization", pp. 1-6
[95] *Ibid*
[96] I.N. Tahir, and N.A.B. Abd Rahman 'Origin of Usul Fiqh from Birth to Competition', p. 5; see also B. Yasir, 'Understanding Usool Al-Fiqh', p. 9
[97] D.I. Abdur Rahman, *Shariah: The Islamic Law,* pp. 106-107
[98] I.N. Tahir, and N.A.B. Abd Rahman 'Origin of Usul Fiqh from Birth to Competition', p. 5
[99] D.I. Abdur Rahman, *Shariah: The Islamic Law,* pp. 88-92
[100] B. Yasir, 'Understanding Usool Al-Fiqh', p. 10

by *Usulists*. The Shafi'i's method is referred to as *Tareeqah Mutakallimeen* (Theologians Method).[101] The Hanafi's method is also called *Tareeqah Fuqaha* (Jurists Method).[102]

***Tareeqah Mutakallimeen* (Theologians Method):**

This is a method of formulation or deduction of Islamic jurisprudential principles. This is done by logically establishing both textual and rational evidences to support the already formulated principles.[103] This method gives no consideration to the opinion of any particular school of law or subsidiary legal rule. The method is liberal in nature as it accommodates opinions of other schools of law that can fit into the established principles.[104] This method also utilizes the formulated principles to judge subsidiary legal rules; thereby giving credence to established principles over and above subsidiary legal rules. The foregoing method of deduction of legal ruling is usually adopted by Maliki, Shafi'i, Hanbali and Zahiri's Schools of law.[105]

The books representing the Theologians method are itemized thus:[106]

i. *Kitab al-'Ahd* written by Abdul-Jabar (d. 415 H);
ii. *al-Mu'tamad Sharh Kitab al-'Ahd* written by Hussein al Basri (d. 465 H);
iii. *Kitab al-Burhan* written by Abu al-Maali Abd-Malik bn Abdullah al-Juwaini (d. 478 H);
iv. *Kitab al-Mustasfa* written by Imam al-Ghazali (d. 505 H);
v. *Kitab al-Ihkam fi Usul al-Ahkam* written by Abu al-Hasan Al-Amidi (d.631 H); and
vi. *Kitab al-Minhaj* written by al-Baydawi (d. 685 H).

***Tareeqah Fuqaha* (Jurists Method):**

This is another method of formulation of Islamic jurisprudential principles. The principles formulated by this method are derived from the existing subsidiary legal rules of a particular *Madhhab* (school of law).[107] This is done by concentrating on the subsidiary legal rules already

[101] Culled from Prof. Abdulrazaaq Abdulmajeed Alaro's Lecture, delivered at MPhil Class of Islamic Law Postgraduate Students, Harmattan Semester, 2019/2020, Islamic Law Department, University of Ilorin.
[102] *Ibid*
[103] A. Zubair, *The Major Sources of Islamic Law,* pp.32-35
[104] As a result of this method, Hanbali and Zahiri's Schools emerged. See *Ibid*, pp. 33-36
[105] Culled from Prof. Abdulrazaaq Abdulmajeed Alaro's Lecture, delivered at MPhil Class of Islamic Law Postgraduate Students, Harmattan Semester, 2019/2020, Islamic Law Department, University of Ilorin.
[106] A. Zubair, *The Major Sources of Islamic Law,* p. 33
[107] *Ibid*, pp.32-35

adjudicated upon by Imam of a particular *Madhhab* with a view to deducing provisions and principles that gave rise to the rules. This method enhances changing of principles with a view to accommodating many subsidiary legal rules and laws. The prominent *Madhhab* that usually adopts this method is the Hanafi School of Law.

The books of Jurists method are as follows:[108]

i. *Kitab Ma'khadh as-Shara'i* by Abu Mansur al-Maturidi (d. 333 H);
ii. *Kitan Taqwim al-Adillah* by Aby Zayd al-Dabusi (d. 430 H);
iii. *Kitab al-Usul* by Fakhr al-Islam al-Barudi (d. 482 H);
iv. *Kitab Tamhid al-Fusul fi al-Usul* by as-Sharakhsi (d. 482 H); and
v. *Kitab al-Manar* by Hafiz al-Din Abdullah Ahmad al-Nasafi (d. 790 H).

Shortcoming of the Two (2) Methods and Emergence of the Third Method:

In practice, the application of the methods of Theologians and Jurists to deduce legal ruling usually encounter certain shortcoming. This is because, in the real sense, a particular issue/question at hand suggests the desirable method to be adopted. And as such, each of the two (2) methods enjoy independent and separate applications by proponents of Schools of Law especially in less complex and simple matters.[109] However, certain complex matters/issues reveal the shortcomings of the two (2) methods, because for such issues, an independent application of one of the methods alone seems not sufficient to come up with a robust legal ruling without considering the other.[110]

It is therefore worthy of note that apart from the Theologians and Jurists methods, there is a third method, albeit not popular.[111] The shortcomings in the two methods of Theologians and Jurists gave rise to this third method which is the combination of Theologians and Jurists methods. This is because separate use of each of the two methods do not always fulfil the needs of *Usulists.*[112] This third method of ruling deduction has also recorded a number books which include:[113]

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[108] *Ibid*, pp. 33-34
[109] *Ibid,* pp.34
[110] *Ibid,* pp. 32-35
[111] *Ibid*
[112] *Ibid*
[113] Ibid, p. 35; see generally, A. Khallaf, *Masadir al-Tashri' al-Islami Fima La Nassa Fihi*, (Dar al-Qalam, Kuwait, 3rd Edition 972) p. 166

i. *Tanqih al-Usul* authored by Sadir al-Shari'ah 'Ubaydallah bn Mas'ud al Bukhari (d. 747 H);

ii. *Jam'u al-Jawami'* authored by Taj al-Din al-Subki (d. 771 H);

iii. *At-Tahrir* authored by Al-Kamal b. Al-Haman (d. 861 H);

iv. *Al-Muwafaqat* authored by Abu Ishaq al-Shatibi (d. 780 H); and

v. *Muslim at-Thabut* authored by Muhib al-Din bn Abd al-Shakur (d. 119 H)

CONCLUSION

This article has traced the history of the emergence of *Usulul Fiqh* from developmental to standardization stages. The article contended that the development of *Usulul Fiqh* was laid down during the time of Prophet Muhammad[114] (SAW) and his rightly guided Caliphs. The Prophet, apart from deriving legal rulings from Qur'an, also approved *Ijtihad* (Independent Research/Reasoning)in situations where the *Qur'an* and even his *Sunnah* (Prophetic Traditions) were silent over a particular problem that needed to be solved. The *Khulafahu Rashidun* (Rightly Guided Caliphs), at their times, followed suit and also originated the concept of *Ijma'* (consensus of opinions) [115] in their problem solving approaches. The article revealed that the systematization of *Usulul Fiqh* was achieved during the period of *Tabi'uun.* In view of the interesting development at this period, the sources of *Fiqh* were systematically arranged in order of importance thus: *Qur'an, Sunnah* (Prophetic Traditions)*, Ijma'* (Consensus of opinion), *Qiyas* (Analogical Deduction), *Istihsan* (Legal Preference) and *Urf* (custom). This was also the period that the major *Madhhabs*[116] unanimously agreed on *Qur'an, Sunnah, Ijma'* (Consensus of opinion), Qiyas (Analogical deduction) as the sources of *Fiqh*. The documentation of *Usulul Fiqh* therefore came to fore at the post *Tabi'uun's* Era with Imam Shafi'i breaking the unprecedented ground of documentation of *Usulul Fiqh* vide his popular book title: *Ar-Risalah* (the Message). Thereafter, many scholars emulated the achievement of Imam Shafi'i as a result of which two major approaches to *Usulul Fiqh* which are Theologians and Jurists methods emerged thereby bringing the standardization of *Usulul Fiqh* to the lime light.

[114] *Allah* SWT posited in the Holy *Qur'an* that there is in the Prophet of Allah, the best exemplary behaviours serving as precedent for *Muslim Ummah* in all ramifications. See *Qur'an* 33:21

[115] Consensus of Opinions of the *Sahabah*

[116] That refers to the popular Sunni Schools which are Hanafi, Maliki, Shafi'i and Hambali Schools.

In view of the importance of *Usulul Fiqh,* it is recommended that all intending scholars of *Shari'ah* should approach the study of *Usulul Fiqh* from historical perspective with a view to appreciating the concept so as to be able to explore its enormous roles and benefits for the ever dynamic Islamic world.